

FCC MAIL SECTION
Before the
Federal Communications Commission
Apr 20 Washington, D.C. 20554
11 15 AM '92

DISPATCHED BY
MM Docket No. 92-886

In the Matter of

Amendment of Section 73.202(b), RM-7962
Table of Allotments.
FM Broadcast Stations.
(Great Falls, Montana)

NOTICE OF PROPOSED RULE MAKING

Adopted: April 8, 1992; Released: April 17, 1992

Comment Date: June 8, 1992

Reply Comment Date: June 23, 1992

By the Acting Chief, Allocations Branch:

1. The Commission has before it for consideration a petition for rule making filed by Staradio Corp. (formerly Portsmouth Broadcasting Corporation) ("petitioner") requesting the substitution of Channel 233C for Channel 233C1 at Great Falls, Montana. Petitioner also requests modification of its construction permit for Station KMON-FM to specify operation on Channel 233C.¹ Petitioner provided an engineering study in support of the proposal and indicated it would file an application for the channel, if allotted.

2. We believe petitioner's proposal warrants consideration because the proposed substitution would provide additional reception service to Great falls and the surrounding area. Channel 233C can be allotted to Great Falls, Montana, in compliance with the minimum distance separation requirements of Section 73.207(b)(1) of the Commission's Rules at petitioner's site 43.3 kilometers (26.9 miles) southeast of the community.² Since Great Falls is located within 320 kilometers (200 miles) of the U.S. -Canadian border, concurrence of the Canadian government will be requested for this allotment. We shall also propose to modify the construction permit for Station KMON-FM to specify operation on Channel 233C in accordance with Section 1.420(g) of the Commission's Rules and will not accept competing expressions of interest for use of the channel or require petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

3. We believe the public interest would be served by proposing the allocation of Channel 233C to Great Falls, Montana, since it could provide the community with expanded FM service. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's rules, for the community listed below, to read as follows:

City	Channel No.	
	Present	Proposed
Great Falls, Montana	225C1, 233C1, 255C1, 262C1, 291C1, 297C	225C1, 233C, 255C1, 262C1, 291C1, 297C

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **June 8, 1992**, and reply comments on or before **June 23, 1992**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

Alan E. Aronowitz
Baraff, Koerner, Olender
and Hochberg, P. C.
5335 Wisconsin, Avenue, N.W., Suite 300
Washington, D.C. 20015-2003

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction

¹ Presently outstanding is a construction permit (BPH-870224IO) for Station KMON-FM which specifies operation on Channel 233C1. Although the construction permit was canceled on March 22, 1991, that action was set aside on June 12, 1991, to enable the subsequently approved receiver to file an application to reinstate the expired construction permit. Upon assumption

of control of Station KMON-FM, Staradio filed an application (BPH-910611JK) to replace the expired construction permit, which is pending. Station KMON-FM is licensed to operate on Channel 233C2 (BLH-5661).

² The coordinates for Channel 233C at Great Falls are 47-09-34 and 111-00-39.

of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Acting Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.